

Tennessee Young Lawyer

A QUARTERLY PUBLICATION OF THE TENNESSEE BAR ASSOCIATION YOUNG LAWYERS DIVISION

Convention Preview

The 2009 TBA Annual Convention will be held June 18-20 at the Peabody Hotel in Memphis. Memphis is known for great music, so it's no surprise that this year's convention will feature great musical entertainment. One highlight will be Thursday night's Memphis Music Extravaganza, where the talented and big-haired Bouffants will share the stage with the big sound of the Jimmy Church Review, one of the mid-south's leading dance and show groups. The two bands will alternate performances on one stage to provide a full night of big fun. On Friday night, the Dempseys will bring their brand of high-octane rockabilly music to an event at Graceland's Car Museum. Finally, on Saturday night the TBA Leadership Law class and the YLD will co-host a party at Auto Zone Park with music from the Memphis-based cover band Infinity.

CLE

For those in need of CLE, the convention offers 10 hours of programming – all of which is included in the registration price. CLE offerings include:

- **Anatomy of a Hoax** with the ethics prosecutors from the Duke University Lacrosse case
- **The Future of America** with former Sen. Howard Baker and former Rep. Harold Ford Jr.
- **Tennessee Supreme Court** with five former justices discussing their time on the court
- **Diversity in Our Profession** with Cesar L. Alvarez, CEO of Greenberg Traurig in Miami

TBA CONVENTION '09 MEMPHIS JUNE 18-20 • PEABODY HOTEL

Big-name speakers, big-impact programs and big-time entertainment make the **2009 TBA Convention** a Big Event you don't want to miss!



- **Before Atticus Said Yes** with legal aid and access to justice speakers
- **Jury Selection** with judges Jon P. McCalla, Samuel H. "Hardy" Mays and J. Daniel Breen
- **Discovery of Electronically Stored Information** with magistrate and trial court judges
- **Appellate Practice** with Tennessee judges and attorneys

Lunch and Learn

Two additional events will provide opportunities to gather with colleagues and hear from inspiring speakers. At the Bench/Bar lunch on Thursday, former University of Tennessee football coach Phil Fulmer will speak on the topic of Leaving a Proud and Enduring Legacy. On Friday, lawyers gather to hear from outgoing TBA President Buck Lewis and welcome incoming president Gail Vaughn Ashworth.

A ticket to each of these events is included in the convention registration package. Additional tickets also may be purchased.

YLD Annual Meeting

The annual membership meeting of the Tennessee Bar Association Young Lawyers Division will be held on Friday, June 19, at 4 p.m. at the Peabody Hotel. The meeting will feature remarks by outgoing president Michelle Sellers, induction of incoming president David Changas, consideration of several business items and voting on six contested races for leadership positions within the organization. All YLD members are encouraged to attend.

The 2009 TBA Convention promises big-name speakers, big-impact programs and big-time entertainment. Make plans now to attend. Learn more or register at <http://www.tba.org/convention2009/>. ■

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The Constitution's Perfect Infallibility

A young lawyer's discovery during his first trip to Washington, D.C.

By Joseph P. Johnson

"**T**here it is!" I said out loud as if I were the only one in the dimly lit room, my words echoing throughout the grand Rotunda populated by other tourists, several of who were now slowly moving away from me. I was staring at the document I spent several tortuous semesters analyzing during law school and several more weeks studying in preparation for two separate state bar exams – one of which didn't even contain a Constitutional law essay question. It's a document so valued, so revered, so important that during its exhibition to the public it is sealed in a state-of-the-art titanium, aluminum, glass box filled with inert argon gas; flanked by two armed guards; and at night, lowered over 20 feet into a vault capable of withstanding a nuclear blast. Of course, I'm speaking of The Constitution of the United States of America.

The Constitution and the first 10 amendments thereto, along with the Declaration of Independence, truly are remarkable and wondrous human intellectual accomplishments, undoubtedly deserving of our utmost respect and defense. But their true genius, as well as the genius of the authors and the founding fathers that developed their content, lies in their infallibility.

During my first trip to Washington, D.C., I was reminded that the authors of these documents were truly special, but in a very un-special way. Everyday, normal human beings, with faults and limitations of the average person, they were very much like you and me. What separated them from the average person is that they recognized they were not perfect, and in so doing, innovatively embodied this particular human characteristic in our new Constitution. Few of us rarely stop to reflect on how amazing these fragile, decaying papers are. Now that I was standing over them, I pondered the true meaning and influence they have had on our country, and the world, throughout the past 130 years. Needless to say, I was extremely excited about my trip to D.C.

First stop: The Constitution

Ascending the escalator from the Gallery



Place-Chinatown Metro rail stop, I was filled with nervous anticipation of soon being in the presence of these prodigious triumphs of scholarly legal writing for the very first time. When I touched down in Washington the day before, the first thing on my "To Do" list was to see the Constitution. I was in our nation's capital accompanying my wife who was attending a four-day math conference. As such, I would be touring most of Washington by myself, my wife having only one open afternoon in her busy schedule to join in on my sightseeing. Today, she would be at the conference until late in the afternoon so I was left to explore the city alone. First stop, the National Archives.

It turns out I had alighted the train at the wrong Metro rail station, several blocks north of the Archives building, and after walking in the wrong direction for about five minutes, I finally reversed my heading and journeyed south on 7th Street. I soon approached the entrance to the National Archives building and looked around for the hoards of people waiting in line to get in, hoping I wouldn't be stuck outside in the frigid morning air for too long. As my wife will surely attest to, I assumed most people were big history geeks, like me, and would be clamoring to get a glimpse of living history, even if it was Monday morning in early January. To my surprise I walked straight through the metal detectors with no one else in sight,

and judging from the energetic greeting I received from the entrance guards, it seemed as if I was the first person to enter the building that morning. No matter, I thought, as I quickly got over my disappointment and made my way to the "Charters of Freedom" exhibit.

I felt a nervous tension bubbling from the pit of my stomach before entering the Rotunda where the "Charters of Freedom" are on permanent display. I stopped outside in the hallway, where a copy of the Magna Carta is displayed (many of the ideas in the Constitution are taken from this "Great Paper"), to figure out how to turn off the flash on my camera so I could snap some pictures of the holy parchments just around the corner. However, after 10 minutes of silently cursing the dreaded contraption, I gave up on the prospect and acquiesced to keeping a mental image of my experience. (I would later discover that you couldn't even get a photo to turn out because it was too dark.) Overhead a domed ceiling reached 75 feet and to the left and right, flanking the Constitution, were two giant murals. Directly under the mural to the left, which depicted the presentation of the Declaration of Independence to John Hancock, the president of the Continental Congress, was the Declaration itself. I decided to examine this first, thinking I should go in chronological order to make the experience more poignant. It was almost impossible to read due to fading

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over the years, but what was still clearly visible was John Hancock's signature, and I couldn't help but laugh at how large it was compared to the other signers, like he was fighting over space in his best friend's yearbook. I squinted for a few minutes trying to read as much as was possible, until I backed up to view the document as a whole, committing this great proclamation to memory.



I engage in when I find something unbelievable) as I read through Articles I through VII, the foundations for our government and legal system. After about 20 minutes, two armed guards on each side of the encasement looked at me suspiciously, like I was some sort of madman. "Please step back, sir," they warned me as I almost touched my nose to the glass, bending over a little

One of the greatest legal briefs

Many people, including lawyers, don't realize that the Declaration of Independence is one of the greatest legal briefs ever written: a persuasive argument to the tyrannical Great Britain and its king, George III, laid out in a very concise and organized manner, specifically explaining the reasons why this new nation should, and was, declaring its independence. Beginning with an introduction, Thomas Jefferson argued why the colonists had the right to do what they were doing. Next, he laid out the specific evidence supporting the colonists' position, including an extensive list of atrocities committed by the British Crown (my favorite part), and finally ended with the ultimate conclusion: the only redress for the harm and oppression laid upon the people was to be free and independent from the monolith responsible for the previously mentioned abusive acts, therefore ending the harm done to them. This was their natural and God-given right. A bold statement to say the least, I wondered whether they really knew what they were getting themselves into and if any of them second guessed the decision to issue this declaration. This brought a strange sense of appreciation for the sacrifices these individuals were about to make in the name of freedom and liberty.

Jefferson as a young lawyer

Thomas Jefferson's early drafts of the declaration were quite imperfect, to say the least, and were drastically revised by more senior members of the Second Constitutional Congress. Recalling my own experience as a young lawyer, I felt a sort of kinship with Jefferson, a young lawyer himself, performing for his superiors and trying to do the best he could. He was given the task of drafting a Declaration of Independence, a routine task at the time, and when he finished, his work was revised by a committee and later revised by the Congress, which deleted a large portion of his original draft. I imagined John Adams or Benjamin Franklin handing back his first draft with all sorts of red pen revisions and portions crossed out, and it was readily apparent the trepidation he must have felt when he submitted his work to his "supervising attorneys," worrying if he had performed his task up to their expectations.

Overwhelmed with thoughts about the consequences suffered by these early colonial Americans by issuing the Declaration of Independence, I moved on to the Constitution, which was much easier to read. To my amazement, losing all track of time, I spent over half an hour pacing back and forth between the four parchments, mouthing the words and rubbing the top of my head (a subconscious nervous reaction

too close to get a better view as I read. To their credit, I'm sure I must have looked a bit crazy. It was their job to protect the "Charters of Freedom" against someone acting as I was, reading out loud to myself, pacing side to side with a gleeful smile on my face. I was contemplating the real beauty of what I was reading, and even my undiagnosed A.D.D. couldn't distract me from that.

It's O.K. to make mistakes

As is evident from the multiple mistakes I made that morning, I am not perfect. As a young associate working in a mid-sized law firm, I often second-guess myself, scared about whether I have made the right decision or chosen the correct strategy on a case. But, even more, I worry about making a wrong decision, and if so, wondering if I can go back and correct it. What was so innovative about the authors of the Constitution was that they also knew they weren't perfect and likely worried about making mistakes when they were inventing our government. As such, they provided a way to correct their mistakes, most obviously and ingeniously, through Article V: the amendment process. In addition to the amendment process, the Constitution is filled with the notion that every branch of the government is capable, and very likely, of making wrong decisions. But it provides the means by which wrong

decisions may be corrected, including the system of checks and balances, the Electoral College, the impeachment process, the veto and override powers, two separate houses of Congress and the appeals process. The 21st Amendment even shows us that we were wrong about being wrong!

I stood up straight and grinned widely about this. It turns out our founding fathers knew they would make many mistakes during their big experiment. It was just a matter of when and where. They were brilliant enough to accept and anticipate their own mistakes, as well as the inevitable mistakes of their predecessors.

With this in mind I proceeded to the Bill of Rights, situated to the right of the Constitution under a mural created in a very similar style to the one above the Declaration of Independence. This one, however, depicts James Madison presenting the final draft of the Constitution to the nation's first president George Washington.

I scanned the document looking for the First Amendment but to my astonishment, Article One, as written, addressed something about apportionment. Confused, I skipped to the Second Article, which addressed congressional pay raises. It took me a few minutes to figure it out, but it finally came to me. Lost from my memory was the fact that the first two amendments in the original draft of the Bill of Rights were not ratified by the states, and therefore, did not become part of the Constitution. Articles two through 12 eventually became the first 10 amendments.

Perusing these articles, I thought about how many of these amendments had been abused or misinterpreted by both politicians and the average citizen. For example, many everyday citizens in our country use the First Amendment rallying cry of freedom of speech, thinking it allows anybody to say pretty much anything they want, whenever they want. We lawyers know this is not the case; freedom has limits on time, place and manner.

Furthermore, the Second Amendment might be the most misinterpreted and abused amendment of them all. Although I personally would never keep a gun in my house, I am somewhat a libertarian politically, and I believe that if a legal adult wants to own and keep a gun, they should have the right to do so. Moreover, there has been constant debate as to whether

the right to bear arms applies collectively to the forming of a militia, or whether it is an individual right. I am of the opinion that it is an individual right. However, it seems that many people are mistaken in thinking that the purpose of the Second Amendment was to protect an individual's right to blow someone away if they broke into their house. Actually, its purpose was to ensure that citizens could protect themselves from the tyranny of their government should they need to stage a revolution. This was a direct reaction to the actions of the British Parliament, which restricted colonists from acting against their oppressive stewards. The amendment was not drafted because there was a problem with breaking and entering in the early days of America. Throughout the history of our great nation, many Americans have been mistaken about many of the rights guaranteed to us by the Constitution, or at least, as to their original purpose and intent.

Final Reflections

I had spent two hours in the National Archives, over an hour in the "Charters of Freedom" exhibit alone, and when I exited the building I was still filled with the same nervous excitement as when I had entered. I took a picture of myself in front of the building, and as I was checking my cursed digital camera to see how the photo turned out, my mind wandered off once again to reflect on the morning's lesson.

The Constitution of the United States of America is the oldest living constitution in the world, and this is so because it embodies one simple characteristic common to humanity: none of us are infallible — not Thomas Jefferson, not the Constitution, not the Bill of Rights and certainly not me. We all make mistakes. The authors of the Constitution knew this, and knew that their new form of government wouldn't be perfect either. Their goal was to make this Constitution last forever, and the only way to do that was to make it a living, breathing thing that, like the rest of us, was inherently flawed. Having great foresight and ingenuity, they created a Constitution based on the premise that one can correct a wrong, update the old or outdated or address new challenges. Mistakes are a part of human nature and the world we live in. Without the ability to

understand this and correct mistakes, nothing would last for long.

Our founding fathers were not the first to invent democracy or a republican form of government. They didn't invent freedom of speech, freedom of religion or a free press. Nor, did they invent civil rights or the equality of men. In fact, most of the Constitution is an amalgam of different ideas embodied in other world governments: a cut-and-paste version of previous ideas invented by other people. Like a Tunica casino lunch buffet, the ingredients had been out there for some time, they just had to choose the ones that suited their pallet.

Our founding fathers, however, may be able to claim that they invented the idea of an imperfect, incomplete, evolving Constitution; a living, breathing Constitution. And like every living breathing thing, the Constitution can be developed as society's morals and ideas develop.

As lawyers, there is a larger lesson we can learn from the Constitution, something that is often times hard for us to accept: "We could be wrong and, in fact, it's anticipated that we will be!" But it also teaches us that it's O.K. to be wrong, because we usually can correct ourselves. Sometimes, the most "right" an individual can be is knowing and considering that he or she may be "wrong." This was the way of our founding fathers. It is the way of the Constitution, politicians, the people and the law. Who doesn't subscribe to the old maxim, "we must learn from our mistakes?" In fact, the Constitution orders us to do this.

Humbled by my experience and swelling with patriotism, I headed off to the next attraction on my list — the National Air and Space Museum. I fumbled with my tourist map, slowly approaching the gigantic obelisk known as the Washington Monument. "Oh wait," I blurted out as I looked around the National Mall. The Air and Space Museum was in the opposite direction. I smiled, as I corrected myself. I'm sure I wasn't the first to make a mistake in Washington! ■

Joseph is currently is working on his first novel, a legal fiction thriller, to be completed this summer. He can be reached at joeypj2@hotmail.com.